A **KETUA PENGARAH HASIL DALAM NEGERI**

v.

LABUAN FERRY CORPORATION SDN BHD

B HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED APANDI ALI J
[CIVIL APPEAL NO: R4-14-01-2009]
26 MARCH 2010

C ***REVENUE LAW:*** *Income tax - Exemption - Vessels not registered under Merchant Shipping Ordinance 1952 - Whether tax payer entitled to claim for tax exemption under s. 54A(1) Income Tax Act 1967 - Merchant Shipping Ordinance 1952, s. 12(4) - Income Tax Act 1967, s. 54(6)*

D This was an appeal by the Ketua Pengarah Hasil Dalam Negeri by way of case stated pursuant to the provisions in para. 34 of sch. 5 of the Income Tax Act 1967. It was an appeal on a question of law, against the deciding order, made by the Special Commissioners. Briefly, the facts were that the respondent tax payer had rented
E three vessels from the State of Sabah and used them for the carrying of vehicles/passengers. The said three vessels were not registered under the Merchant Shipping Ordinance 1952 ('MSO') during the relevant years of assessments, namely from the year 1996 to 2001. In 2007, the three vessels were bought over by the
F respondent and were in the process of registration under the Merchant Shipping Ordinance 1952 and they were legally obliged to register them under the provisions of s. 12 of the said Ordinance. The issue/question of law was whether, on the facts, the respondent tax payer was entitled to claim for tax exemption under s. 54A(1) of the Income Tax Act 1967.

G **Held (allowing the appeal):**

(1) The findings by the Special Commissioners that the three vessels were exempted from the provisions of the MSO, as they
H came under the provisions of s. 4 and s. 271 of the said Ordinance, was a misconception. Although the three vessels belonged to the State of Sabah, under the clear provisions of s. 12(4) of the MSO, those ships belonging to the Government of Malaysia or any state thereof, were still subject to registration

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under the Ordinance. The Special Commissioners had erred in their interpretation of s. 54A(1) Income Tax Act 1967 *vis a vis* the provision of the MSO and as provided for under s. 54(6) of Income Tax Act 1967. (paras 5, 6 & 10)

(2) Tax exemption can only be given to the operators of ships that are registered under the MSO. The three vessels were not registered. They could only enjoy any exemption upon and after registration, and not before. Once the vessels are registered, then only the vessels could be labelled as a 'Malaysian ship' and henceforth qualify for the tax exemption under s. 54A(1) of the Income Tax Act 1967. Before registration under s. 12 of the MSO, the vessels could not be classified as 'a Malaysian ship' for purposes of the tax exemption. The wordings in s. 54(6) of the Income Tax Act are very clear and unambiguous as they refer to all the preceding subsections of s. 54A. (para 7)

Case(s) referred to:

Multi-Purpose Holdings Berhad v. Ketua Pengarah Hasil Dalam Negeri [2006] 1 CLJ 1121 CA ***(refd)***

National Land Finance Co-operative Society Ltd v. Director General Of Inland Revenue [1993] 4 CLJ 339 SC ***(refd)***

Legislation referred to:

Income Tax Act 1967, s. 54A(1), 54(6), sch 5

Merchant Shipping Ordinance 1952, ss. 4, 11, 12(4), 13, 271

For the appellant - Mohd Haris Hanapi (Norsalwani Muhd Nur with him); Inland Revenue Board

For the respondent - Eddy Kwang; M/s Kwang Lim & Azni

Reported by Suhainah Wahiduddin

JUDGMENT

Mohamed Apandi Ali J:

Introduction

[1] This is an appeal, by Ketua Pengarah Hasil Dalam Negeri, by way of case stated pursuant to the provisions in para. 34 of Schedule 5 of the Income Tax Act 1967. It is an appeal on a question of law, against the deciding order, made by the Special Commissioners.

[2] The only issue/question of law: whether, on the facts, the respondent tax-payer is entitled to claim for tax exemption under s. 54A(1) of the Income Tax Act 1967.

[3] Upon perusal of the case stated (encl. 1) and the submissions filed herein, I made the following findings:

On The Facts

1. The respondent tax-payer rented 3 vessels from the state of Sabah and used them for the carrying of vehicles/passengers between the jetty at Labuan and Menumbuk in Sabah.

2. The said 3 vessels were not registered under the Merchant Shipping Ordinance 1952 (MSO) during the relevant years of assessments, namely from year 1996 to 2001.

3. In the relevant years of assessment, the respondent did obtain shipping profits from their operations.

4. In year 2007, the 3 vessels were bought over by the respondent and were in the process of registration under the Merchant Shipping Ordinance 1952 and that they are legally obliged to register them under the provisions of s. 12 of the said Ordinance.

[4] The Law

1. Tax exemption, under s. 54A of the Income Tax Act 1967 can only be given to Malaysian operators of "Malaysian Ships".

2. "Malaysian Ships" are those registered under the Merchant Shipping Ordinance 1952.

3. "Malaysian Ship" as defined under s. 54(6) of the Income Tax Act 1967 means a sea-going ship registered as such under the Merchant Shipping Ordinance 1952, other than a ferry, barge, tug-boat, supply vessel, crew boats, lighter, dredger, fishing boat or other similar vessel.

4. Section 11 of the Merchant Shipping Ordinance 1952 deals with the qualifications of a Malaysian Ship.

5. Section 12 of the Merchant Shipping Ordinance 1952 deals with the mandatory requirement of registration of Malaysian ships with the Registrar General of Ships.

6. Section 13 of Merchant Shipping Ordinance 1952 speaks of exemptions from registration. (This section is not applicable in this case).

Misconception Of The Law

[5] With due respect, the findings by the learned Special Commissioners that the 3 vessels are exempted from the provisions of the Merchant Shipping Ordinance 1952, as they come under the provisions of s. 4 and s. 271 of the said Ordinance, is a misconception.

[6] This is particularly so because, although the 3 vessels belongs to the State of Sabah, under the clear provisions of s. 12(4) of the Merchant Shipping Ordinance 1952, those ships belonging to the Government of Malaysia or any state thereof, are still subject to registration under the Ordinance. This Section 12(4) was inserted *vide* the Merchant Shipping (Amendment And Extension) Act 1984 (Act A603).

Conclusion

[7] Tax exemption can only be given to the operators of ships that are registered under the Merchant Shipping Ordinance 1952. The 3 vessels were not registered. Other than the evidence of implied admission of the need to register the 3 vessels by the subsequent acts of the respondent in year 2007 the facts also disclosed that the 3 vessels are not exempted from the requirement for registration as a Malaysian ship under the Merchant Shipping Ordinance 1952. They can only enjoy any exemption upon and after registration, and not before. Once the vessels are registered, then only the vessels can be labelled as "a Malaysian ship" and henceforth qualify for the tax exemption under s. 54A(1) of the Income Tax Act 1967. Before registration under s. 12 of the Merchant Shipping Ordinance 1952, the vessels cannot be classified as "a Malaysian ship" for purposes of the tax exemption. There are no 2 ways about that. The wordings in s. 54(6) of the Income Tax Act are very clear and unambiguous as they refer to all the preceding subsections of s. 54A.

[8] As there is no ambiguity in the interpretation of the laws that are relevant to the issue at hand, there is no room for any other interpretation to be construed in favour of the tax payer. On this matter, it is suffice to refer, by analogy to the cases of:

A *National Land Finance Co-operative Society Ltd v. Director General Of Inland Revenue* [1993] 4 CLJ 339; and

Multi-Purpose Holdings Berhad v. Ketua Pengarah Hasil Dalam Negeri [2006] 1 CLJ 1121.

B **[9]** It is also noted that in tax related matters, the onus of proof is always on the tax-payer who claims for exemption. (See also para. 13 of sch. 5 of the Income Tax Act, which provides that "The onus of proving that an assessment against which on appeal is made is excessive or erroneous shall be on the appellant").

C **[10]** It is my opinion and conclusion that, based on the facts adduced/produced as in the case stated, the learned Special Commissioners had erred in their interpretation of s. 54A(1) Income Tax Act 1967 *vis-a-vis* the provision of the Merchant Shipping D Ordinance 1952 and as provided for under s. 54(6) of Income Tax Act 1967.

[11] Accordingly, the appeal by the Ketua Pengarah Hasil Dalam Negeri is hereby allowed, and accordingly, pursuant to the provisions E of para. 39 of sch. 5 of the Income Tax Act, it is hereby ordered that:

(i) The assessments to which the case relates to, be confirmed; and

(ii) Costs in the sum of RM2,500 to be paid to the appellant.

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